



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Cascade Industrial Health

File: B-232992

Date: February 6, 1989

DIGEST

1. Allegation that solicitation improperly was not set aside for small businesses and did not accord preference to small disadvantaged women-owned businesses is dismissed as untimely because this alleged impropriety was apparent from the face of the solicitation and should have been filed prior to the closing date for the receipt of initial proposals, instead of after the award.

2. Where procuring agency downgraded protester's technical proposal on the basis of proximity to site and continuity of service, such scoring was reasonable under stated evaluation factors of comprehensiveness of services.

DECISION

Cascade Industrial Health protests the award of a contract by the Forest Service, United States Department of Agriculture, under request for proposals (RFP) No. R8-88-21, to Emory University to provide a wellness program to Forest Service employees in Atlanta, Georgia. Cascade contends that the Forest Service did not give due consideration to small business priority factors in evaluating its proposal, evaluated its proposal on the basis of criteria not stated in the solicitation, and did not set aside the procurement exclusively for small businesses.

We deny the protest.

The requirement of the solicitation was to provide for health and physical fitness evaluations, including an individual health questionnaire, exercise tolerance test, development of individual prescription and one-on-one counseling, and cardiovascular tests based on age and risk. An education program including nutrition, stress management, weight control, exercise, heart disease control and lifestyle change and management was to be provided to

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approximately 380 employees. The solicitation was not restricted to small businesses because the Forest Service's preliminary market survey, which indicated that large businesses were the primary supplier, did not establish that restricting the procurement would result in sufficient competition.

The RFP was issued on June 20 and the closing date for submitting initial proposals was July 20. The RFP stated that award would be made to the offeror whose technical and cost relationship was most advantageous to the government and that cost was secondary to technical considerations, although cost would be a factor in the award decision. The RFP further stated that award may not be made to the lowest priced offeror and that the government reserved the right to make cost/technical tradeoffs in its best interest. Offerors' technical proposals were to be evaluated based on the experience and qualifications of the firm, worth 30 points, the experience and qualifications of the individuals performing the service, worth 25 points, the quality/comprehensiveness of the health evaluation/reevaluation services, worth 18 points, the quality/comprehensiveness of the educational program, worth 18 points, and the comprehensiveness of the total program support availability of related services, worth 10 points.

The Forest Service received six proposals in response to the RFP. Cascade's initial proposal received the highest number of technical points; however, the score reflected the evaluation team's decision to deduct four points from Cascade's proposal in the third and fourth categories listed above because it was located in Oregon. The only other offeror that was located outside of Atlanta, Georgia, also was penalized by four points in the same categories for the same reason. The evaluation panel determined that Cascade's proposal was sound technically but that it was unacceptable without clarification as to how it intended to deliver these services from Oregon.

The Forest Service included five firms in the competitive range and conducted discussions on August 18, 19, and 22. Best and final offers (BAFO) were submitted on September 1. After evaluating BAFOs, the evaluation team gave Emory the highest technical score of 92, Dekalb General received 89, and Cascade received a score of 88. Cascade submitted the lowest cost proposal at \$101,200, Emory was second at \$102,050, Dekalb's price was \$140,360. The other offerors were determined to be unacceptable.

Cascade's BAFO technical score continued to reflect the evaluation team's deduction of four points for Cascade being located out of town. The team determined that even though Cascade addressed the problem of providing personal services from Oregon, distance would affect the program's flexibility and the 3 hour time differential between Oregon and Georgia would diminish the availability of services. However, the evaluation team also determined that the three proposals were of comparable quality but that the local firms had a technical advantage inherent in their location because the local firms could provide services as needed, rather than on a fixed schedule basis. Further, the evaluation team determined that the local vendors would be available to the agency's technical contact and individual employees on a continual basis and that educational programs would be more complete if done over a 10 to 12-week period, rather than once a week in a 2 to 3 hour session. The availability of services to spouses was also determined to be an advantage of the local firms.

Cascade contends that Federal Acquisition Regulation § 19.202-3 (FAC 84-31) directs that priority be accorded to small businesses in the case of equal low bids and further that the regulations required the Forest Service to give priority consideration to small disadvantaged women-owned businesses. Also, Cascade contends that the RFP should have been set aside for small businesses.

Since this was a negotiated procurement, and not a request for sealed bids, the regulation regarding tie bids that Cascade argues governs this competition is not applicable. Further, we find the contentions that the RFP was not set aside for small businesses and that preference was not being accorded to small disadvantaged women-owned businesses are untimely. Protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for the receipt of initial proposals must be filed prior to that date. 4 C.F.R. § 21.2(a)(1) (1988). The fact that the RFP was unrestricted and no preferences were to be granted was apparent from the face of the solicitation.

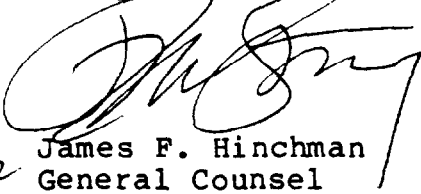
While Cascade objects to the manner in which proposals were evaluated, we find that the Forest Service's evaluation was consistent with the announced evaluation criteria and was reasonably conducted.

A contracting agency need not specifically identify the evaluation subfactors it uses if they are reasonably related to the evaluation criteria set out in the solicitation. Washington, Occupational Health Assocs., Inc., B-222466, June 19, 1986, 86-1 CPD ¶ 567. Cascade was downgraded

because of its geographic location and we find such a scoring of its proposal was reasonable under the evaluation criteria. Cascade lost four points because of its geographic location, and we find that consideration of location was proper under the evaluation factors of quality/comprehensiveness of the services and comprehensiveness of the program support availability of related services. The Forest Service determined that in view of Cascade's distance from the site, its offered services would not be as comprehensive and the local firms would provide services on a continual basis rather than once a week and their services for spouses was superior. We find these were matters that could be encompassed by the two evaluation factors under which Cascade was downgraded.

While Cascade argues that, as an out of town firm, it never had a realistic chance to compete with the local firms, we disagree. As the scoring of the proposals shows, Cascade was competitive with the other firms and if it had received a higher technical score in these two evaluation factors, notwithstanding the loss of four points for location, it could have received the award.

The protest is denied.


for James F. Hinchman
General Counsel